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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1958

No. 636

PACIFIC EMPLOYERS INSURANCE COMPANY,
Petitioner,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA, DICK R. THOMAS, JOE CALABRESE and DAN CALABRESE, dba Calabrese Trucking, JOE CALABRESE and DAN CALABRESE as individuals, Y. THOMAS, and THE VETERANS ADMINISTRATION OF THE UNITED STATES,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
to the Supreme Court of the State of California.

W. N. MULLEN,
MULLEN & FILIPPI,
315 Montgomery Street, Mezzanine,
San Francisco 4, California,
Attorneys for Petitioner,

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PACIFIC EMPLOYERS INSURANCE COMPANY,
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INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA, DICK R. THOMAS, JOE CALABRESE and DAN CALABRESE, dba Calabrese Trucking, JOE CALABRESE and DAN CALABRESE as individuals, Y. THOMAS, and THE VETERANS ADMINISTRATION OF THE UNITED STATES,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
to the Supreme Court of the State of California.

Pacific Employers Insurance Company, Petitioner herein, prays that a Writ of Certiorari be issued to review the final decision of the Industrial Accident

Commission of the State of California which became final upon the denial by the Supreme Court of the State of California of Petitioner's Petition for Hearing in that Court following denial by the District Court of Appeal of the State of California, Fourth Appellate District, of Petitioner's Petition for Writ of Review in that Court.

OPINION BELOW.

The Supreme Court of the State of California and the District Court of Appeal of the State of California, Fourth Appellate District, published no opinion and summarily denied the Petitions without comment. The denial of the District Court of Appeal of the State of California, Fourth Appellate District appears in 162 A.C.A. No. 6, at page 8 of the Minutes therein. The denial of the Supreme Court of the State of California appears in 50 A.C. No. 29 at page 2 of the Minutes therein.

The denial by the Supreme Court of the State of California is attached hereto as appendix "A" while the denial of the District Court of Appeal of the State of California, Fourth Appellate District is attached hereto as appendix "B".

The opinion of the Industrial Accident Commission of the State of California accompanying its order denying Defendant's Petition for Reconsideration dated March 20, 1958 is attached hereto as appendix "C".

JURISDICTION.

1. Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1257, which provides in part:

> "Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows: . . .
>
> (3) By Writ of Certiorari . . . where the validity of a State Statute is drawn in question on the ground of it being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under the United States."

2. Rule 19 (1) (a) of the revised Rules of the Supreme Court of the United States provides that: "Where a State court has decided a Federal question of substance not theretofore determined by this Court, or has decided it in a way probably not in accord with applicable decisions of this Court", that review by Writ of Certiorari is proper. See also *Milkwagon Driver's Union v. Meadowmoor Dairies,* 312 U.S. 287, 85 L.Ed. 836, 61 S.Ct. 552.

The following cases, holding that the United States Supreme Court may review a decision of the highest court of a state construing a state statute by which construction it is contended a party to the proceeding is denied a right guaranteed by the laws of the United States and Federal Constitution as interpreted by the

decisions of this court, sustain the jurisdiction of this court:-

Cudahy Co. v. Parramore, 263, U.S. 418; 44 S.Ct. 366, 68 L.Ed. 366;

Dahn Ke-Walker v. Bondurant, 257 U.S. 282, 42 S.Ct. 106, 66 L.Ed. 239;

Eureka Pipe Line Co. v. Hallanan, 257 U.S. 265, 42 S.Ct. 101, 66 L.Ed. 227;

St. Louis etc. Railway Co. v. Wynne, 224 U.S. 354, 32 S.Ct. 493, 56 L.Ed. 799.

3. The Supreme Court of the State of California is the highest Court of the State.

4. The order of the Supreme Court of the State of California denying Petitioner's Petition for Hearing in that Court is a final order.

5. Under the laws of the State of California, the District Court of Appeal of the State of California, Fourth Appellate District, is the only court by which your Petitioner could seek review of the order denying Defendant's Petition for Reconsideration and the order granting lien claimant's Petition for Reconsideration and Decision After Reconsideration of the Industrial Accident Commission of the State of California, and the order denying the Petition for Writ of Review to that Court is a final order of that Court.

6. The order granting lien claimant's Petition for Reconsideration and Decision After Reconsideration and the order denying Defendant's (your Petitioner) Petition for Reconsideration of the Industrial Accident Commission of the State of California is dated March 20, 1958. The order denying your Petitioner's

Petition for Writ of Review in the District Court of Appeal of the State of California, Fourth Appellate District is dated August 22, 1958. The Order Denying Petition for Hearing before the Supreme Court of the State of California is dated October 15, 1958. (See appendices "A", "B", and "C", respectively.)

7. The first Federal question of substance which has been decided by the State Court is that the Veterans Administration of the United States may be allowed a lien by an award of the Industrial Accident Commission of that state for medical and hospital care given by the Veterans Administration to a veteran under the authority of 38 U.S.C.A. Section 706. The Industrial Accident award was made solely under a *general* statute allowing liens for expenditures for medical and hospital care by or on behalf of the injured employee; however, there is no federal statute or regulation which, under the facts of this case, would allow the Veterans Administration to request and receive such a lien. This decision of the Industrial Accident Commission of the State of California, upon which review was denied by the District Court of Appeal of the State of California and by the Supreme Court of the State of California, is directly in conflict with the decision of this court in construing the rights of federal agencies to pursue claims for reimbursement in the State Courts under State Statutes, where no Federal Statute authorizes such claims. (*United States v. Gilman*, 347 U.S. 507, 98 L.Ed. 898, 74 S.Ct. 695; *United States v. Standard Oil Company*, 332 U.S. 301, 91 L.Ed. 2067, 67 S.Ct. 1604.)

There is an urgent need for uniformity of decision in regard to existing and potential lien claims of the Veterans Administration Hospitals against Workmen's Compensation carriers. Most states now have Workmen's Compensation Insurance laws, and it is evident that there are great numbers of veterans who will receive industrial injuries and then request and receive medical care and treatment from the Veterans Administration Hospital. There is conflict within this State, as well as interstate conflict, in regard to whether or not the Federal Laws permit a Veterans Administration Hospital to make claim against a veteran or a Workmen's Compensation carrier for hospital and medical treatment.

After the decision of the Industrial Accident Commission of the State of California on the matter herein, a later order was issued in IAC Claim No. 56 SF 175-585 which denied the Veterans Administration Hospital lien claim for treatment to a veteran on the same facts.

Federal cases cited in the Statement hereinafter illustrate decisions of this court in analogous situations which Petitioner deems controlling on the issue that such lien claims are not permitted. The decision of the State court was contra and perpetuates a conflict and lack of uniformity which should be resolved by this court. The rights involved in these matters are substantial and vitally affect the parties, business procedures, and practices, where in this case, for example, the sum involved is in excess of $10,000.00.

THE QUESTIONS PRESENTED.

May the Veterans Administration of the United States rely on a state statute creating a general hospital and medical care lien against awards in Workmen's Compensation cases to obtain reimbursement for monies expended for the hospital care and medical treatment of a veteran of the United States, where such veteran was admitted to the Veterans Administration facility under the authority of Federal law, and where said Veterans Administration has no right for reimbursement for the expenditures as against the veteran.

The primary importance of this issue stems from the fact that this court has rendered previous opinions in analogous cases involving Veterans Administration Hospital lien claims wherein this court has decided that questions of this nature are federal and involve federal fiscal matters "not of special or peculiar concern to the states or their citizens". The failure of the state courts to decide the present case in accord with the previous federal decisions has thus denied petitioner of substantial rights and created a legal conflict which should be remedied.

STATUTES AND REGULATIONS INVOLVED.

This case presents issues, as set out in the following statement, which involve the following Statutes and Regulations that are set out verbatim as appendices:

Appendix D—38 U.S.C.A., Section 706—Domiciliary care and hospital treatment.

Appendix E—38 C.F.R., Section 17.47(d)—Hospital treatment or domiciliary care.

Appendix F—38 C.F.R., Section 17.48(d).

Appendix G—Labor Code of the State of California, Section 4600 and Section 4903.

STATEMENT.

Dick R. Thomas filed a claim for Workmen's Compensation benefits under the Workmen's Compensation Law of the State of California because of an injury allegedly having arisen out of and having occurred in the course of his employment. He was admitted to the Veterans Administration Hospital in Fresno, and later transferred to the Veterans Administration Hospital facilities in Long Beach, California.

A lien claim was filed by the Veterans Administration with the Industrial Accident Commission of the State of California against any award giving to the veteran reimbursement for the reasonable expenses incurred by or on behalf of Dick R. Thomas for medical treatment to cure and relieve from the effects of said injury.

On May 4, 1955, the first hearing was held before a referee of respondent Commission in Long Beach, California. At that hearing, Petitioner raised the issue of the "validity of the lien claim of the Vet-

erans Administration." It was specifically argued by counsel for Petitioner that the bills of the Veterans Administration and the request for a lien thereof was improper. It was contended that inasmuch as Dick R. Thomas was entitled as a matter of right to the services of the Veterans Administration Hospital because of service in the United States Military Forces there was no jurisdiction for the entertainment of the claim and Petitioner could not be held responsible therefor.

Findings and Award issued on December 31, 1957, found that Dick R. Thomas sustained an injury arising out of and occurring in the course of his employment. Among other things Dick R. Thomas was granted an award for expense *incurred* for self-procured medical treatment reasonably required to cure and relieve him from the effects of the injury. Because of said finding the Veterans Administration of the United States was allowed a lien for medical treatment, hospitalization, and medical services provided by it.

Petition for Reconsideration was filed on or about the 21st day of January, 1958, and among other contentions, Petitioner contended that the Industrial Accident Commission exceeded its jurisdiction when it allowed the lien claim of the Veterans Administration for medical and hospital services furnished because of such injuries.

On February 3, 1958, Petitioner directed a letter to the Industrial Accident Commission of the State

of California in which the case of *U. S. v. Harleysville Mutual Casualty Company,* 150 Fed. Supp. 326 was cited. It was urged that under *U. S. v. Standard Oil Company,* 332 U.S. 301, 91 L.Ed. 2067, 67 S.Ct. 1604, that the Veterans Administration lien was improperly allowed because the Veterans Administration of the United States could not rely on a state statute allowing liens for the expense for medical services occurred by or on behalf of the Veteran.

The Industrial Accident Commission of the State of California issued Order Denying said Petition for Reconsideration on March 20, 1958.

In denying the Petitioner's Petition for Reconsideration, the Commission stated: "Petitioner contends that there is no Federal statute creating such a lien, and no Federal statute allowing costs in a Veterans hospital to be charged to a veteran. The lien of the Veterans Administration filed in the instant case was signed by the registrar of the Veterans Administration Hospital, and a representative of the Veterans Administration appeared on behalf of the Administration at the hearing in this matter. It must be presumed that the Registrar acted within the scope of his authority on behalf of the Veterans Administration in filing the lien claim, and it must also be presumed that the representative of the Administration was acting within the scope of his authority, appearing on behalf of the Veterans Administration at the hearing. This Commission does not have jurisdiction to adjudicate or determine the extent of the authority of an agent of the Federal government nor the extent of the author-

ity of the representative of the government in the litigation in this case. Veterans Administration furnished medical and hospital services to the Applicant, filed a lien, and Applicant was awarded reimbursement for self-procured medical and hospital services. Under the provisions of the Labor Code, this Commission is authorized to allow liens for reasonable expenses incurred by or on behalf of the injured employee for medical and hospital treatment. The lien of the Veterans Administration, United States government, was properly allowed."

The Labor Code Section relied on by the Industrial Accident Commission is Labor Code Section 4903 which states: "Allowable Liens. The Commission may determine and allow as a lien against any amount to be paid as compensation . . .

(b) Medical and Hospital Expenses. The reasonable expense incurred by or on behalf of the injured employee is provided in Article 2 of Part Two of this Division."

Petition for Writ of Review was sought in the District Court of Appeal of the State of California, Fourth Appellate District, on the 15th day of August, 1958. Answer was filed to the Petition for Writ of Review by the Veterans Administration of the United States and by the Industrial Accident Commission. In their answers both the Industrial Accident Commission of the State of California and the Veterans Administration of the United States merely argued that the lien claim was proper because it had always been

allowed, and further claimed that the cases cited by Petitioner were not in point.

On August 22, 1958, Order issued denying said Petition for Writ of Review.

Petitioner then, within time as provided by law, filed a Petition for Hearing in the Supreme Court of the State of California after decision of the District Court of Appeal. Answer was again filed by the Industrial Accident Commission, but not by the Veterans Administration of the United States. The Supreme Court of the State of California denied hearing without comment on October 15, 1958.

In *United States v. Saint Paul Mercury Indemnity Co.*, 238 Fed. 2d 594, the Court refused to allow the Veterans Administration to recover its expenses for providing medical treatment to a veteran of World War II who was treated for poliomyelitis in a Veterans Administration Hospital facility under the authority of 38 USCA Section 706. It was held it was mandatory for the administrator of Veterans Affairs to admit a veteran of the United States services under the funds provided by Congress, furnish necessary hospitalization, and domiciliary care, when said veteran was in need of hospitalization or domiciliary care, and when he was financially unable to defray the expenses thereof. It was held that the administrator was left with no power of determination or judgment. It was expressly mandated that he should accept as sufficient evidence of the veteran's inability to defray necessary expenses, the veteran's own statement under oath,

upon a form prescribed by the administrator, that he was unable to defray such expense. The veteran in that case was admitted to the hospital under 38 CFR Section 1747.

38 CFR 17.48(d) deals with the right of the veterans admitted to the Veterans Hospital under 38 CFR Section 1747, to collect from third parties for such treatment. The Court interpreted that section to mean that the Veterans Administration only has the right which a veteran may have against a third party. It went on to hold that the Veterans Administration could not collect such expenses from the veteran.

Section 4600 of the Labor Code of the State of California provides: "PROVISION BY EMPLOYER: LIABILITY FOR FAILURE TO PROVIDE; REIMBURSEMENT OF EMPLOYEE FOR EXPENSES OF PROVING CONTESTED CLAIM: Medical, surgical, and hospital treatment, including nursing . . . which is reasonably required to relieve from the effects of the injury shall be provided by the employer. In the case of his neglect or refusal reasonably to do so, the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing treatment."

The right of the employee or veteran is to collect only those expenses which he has incurred. Under *United States v. Saint Paul Mercury Indemnity Company, supra,* the employee had incurred no liability. The Veterans Administration right under 38 CFR 1747 is no greater than that which the veteran himself

had. Since the veteran had no right to collect, as he had incurred no expense, it follows that the Veterans Administration also has no such right.

In *United States v. Harleysville Mutual Casualty Co.*, 150 Fed. Supp. 326, the Court held that the Veterans Administration of the United States could not rely on a general state statute providing a lien for hospitalization treatment given to all hospitals within the state as against third party settlements for such injuries. The Court held that under the authority of *United States v. Standard Oil Company*, 332 U.S. 301, and *United States v. Gilman*, 347 U.S. 507, 98 L. Ed. 898, 74 S. Ct. 695, that the dealings between a veteran and the Veterans Administration Hospital were so exclusively Federal in nature that the Veterans Administration could not rely on any state statute to establish such a lien. This is precisely the same question presented by your Petitioner to this Court.

In its Answer to the Petition for Hearing in the Supreme Court of California, the Industrial Accident Commission argued that the *U. S. v. Harleyville Mutual Casualty Co.* case was decided on the government-soldier relationship, not on the veteran-Veterans Administration relationship. This argument totally ignores the direct language of that case.

The arguments of both the Industrial Accident Commission and the Veterans Administration, on appeal in the state courts below, were directed to the point that morally the workmen's compensation carrier should be required to pay the Veterans Admin-

istration for the medical care gratuitously furnished the veteran, and sought to dismiss the controlling authority of the cases herein cited by Petitioner, though very analogous, because a third party other than a workmen's compensation carrier was involved. The principle of the herein cited cases maintains regardless of what third party is involved.

REASONS FOR GRANTING THE WRIT.

The Industrial Accident Commission of the State of California has refused to follow the interpretation of Federal law laid down by Federal Courts. It has taken jurisdiction over matters which are exclusively Federal in nature and has refused to follow the mandates of Federal Courts and of your Court. It has done so on the pretext that it has no jurisdiction to deny such claims.

The right of the Veterans Administration of the United States to collect from third parties is definitely a Federal question of substance. It has not been determined by your Court, although *U. S. v. Gilman*, supra, and *U. S. v. Standard Oil Company*, supra, are guiding lights in such an interpretation.

The Industrial Accident Commission of California has clearly exceeded its jurisdiction, and has taken the property of your Petitioner without having the jurisdiction to do so. This is clearly a violation of your Petitioner's rights under the Amendment XIV, Article 1, of the Constitution of the United States.

CONCLUSION.

Petitioner respectfully submits that the Writ of Certiorari should issue to the end that this Court may review the decision of the Industrial Accident Commission of the State of California, a decision which the District Court of Appeal of the State of California, Fourth Appellate District, and the Supreme Court of the State of California have refused review. It should be determined whether that decision has deprived Petitioner of rights and property without authority, and in violation of federal law, when it awarded the lien to a federal agency which had no authority under the law, as interpreted by this and other federal courts, to claim the property. The writ should also run so as to review the interpretation of the applicable federal law rendered by the state commission (and ultimately the highest state court by its denial of review) which is contrary to the interpretation of that law by your Court and other federal courts.

Dick R. Thomas incurred no liability or expense for the services given. No claim could be perfected against him for such services. Therefore, Petitioner was improperly held responsible for an alleged indebtedness which did and can not exist because the medical and hospital treatment was received as a matter of right with no right of recompense. Since no claim could be made against him no claim may be passed on to Petitioner through him.

It should be held the granting of the lien was contrary to law and without the jurisdiction of the In-

dustrial Accident Commission of the State of California and therefore that portion of the award is of no force and effect.

Such other relief as deemed meet and just is also requested.

Dated, San Francisco, California,
January 2, 1959.

Respectfully submitted,
W. N. MULLEN,
MULLEN & FILIPPI,
Attorneys for Petitioner.

(Appendices Follow.)

Appendix A

(4th Civ. 5679)

Pacific Employers Insurance Company vs. Industrial Accident Commission et al. (August 22, 1958).

Petitioner's Application for Hearing Denied.

Appendix B

(#5679)

Pacific Employers Insurance Company vs. Industrial Accident Commission et al.

By the Court: The Petition for Writ of Review Is Denied. Griffin, P.G. (August 22, 1958)

Appendix C

Mailed From San Francisco Office
Mar. 20, 1958
Industrial Accident Commission
State of California

Before the Industrial Accident Commission of the State of California

Claim No. SF 160-079

Dick R. Thomas,
Applicant,
vs.
Dan Calabrese and Pacific Employers Insurance Company,
Defendants.

ORDER DENYING DEFENDANT'S PETITION FOR RECONSIDERATION

Good Cause First Appearing Therefor:

It Is Ordered that defendant Pacific Employers Insurance Company's Petition for Reconsideration filed

herein on January 21, 1958, be, and the same hereby is, denied.

Industrial Accident Commission
of the State of California
F. A. Lawrence
John J. Synon
Roland J. Henning
Commissioners

Received 8:45, Mar. 21, 1958
Mullen & Filippi

March 18, 1958 Case No. 160-079

REPORT OF PANEL ONE

The record, including the transcripts of testimony, has been carefully reviewed.

Applicant, while employed by Dan Calabrese on August 29, 1954, as a trailer builder and welder, sustained an injury arising out of and occurring in the course of his employment. Applicant worked under the control and direction of his employer and was paid on an hourly basis. He was not an independent contractor.

While the contract of insurance involved in the case was issued to Dan Calabrese and Joe Calabrese, copartners, dba Calabrese Trucking, no such partnership existed. When defendant carrier was informed that the designation of the policy was in error, and the Calabreses operated separate businesses, it advised that the policy covered each individually. The policy was thereafter renewed without any change in desig-

nation and was in effect on the date of the injury. Defendant carrier is therefore estopped, and the policy should be reformed.

The injury sustained by applicant caused temporary disability for the period from August 30, 1954 to and including April 13, 1956. Such injury also caused permanent disability of 100 per cent.

Counsel for applicant have rendered services to applicant of the reasonable value of $2,000.

The lien claim of James C. Jahjigian, for money advanced for nursing services furnished applicant, should also be allowed.

Counsel for applicant are entitled to a lien in the sum of $626.14 for advanced litigation costs.

Department of Employment, State of California, is entitled to a lien for $905 instead of $910 allowed on the Findings and Award filed December 31, 1957.

While the Petition for Reconsideration filed by the Department of Employment should be granted, the Petition for Reconsideration filed by the defendant carrier should be denied.

Decision after Reconsideration should accordingly issue.

Industrial Accident Commission
of the State of California
F. A. Lawrence
John J. Synon
Roland J. Henning
Commissioners

Received 8:45
Mar 21 1958
Mullen
&
Filippi
Mailed from San Francisco Office
Mar 20 1958
Industrial Accident Commission
State of California

Before the Industrial Accident Commission
of the State of California

Case No. 160-079

Dick R. Thomas,
Applicant,
vs.
Dan Calabrese and Pacific Employers Insurance Company,
Defendants.

ORDER GRANTING LIEN CLAIMANT'S PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Good Cause Appearing Therefor,

It Is Ordered that the Petition for Reconsideration of lien claimant, State of California, Department of

Employment, filed herein January 20, 1957, be, and the same hereby is, granted.

It Appearing to the satisfaction of this Commission that no sufficient reason exists for taking further evidence, after a review of the entire record, including transcripts of the testimony, this Commission now concludes that further proceedings are not essential for the disposition of the claim and makes its Decision after Reconsideration as follows:

Good Cause Appearing Therefor,

It Is Ordered that Findings and Award filed herein December 31, 1957 be, and the same hereby is, vacated, annulled and set aside, and that the following Findings and Award be substituted in lieu thereof and made the Decision after Reconsideration of this Commission.

Findings of Fact

1. Dick S. Thomas, born May 31, 1915, while employed as a trailer builder and welder on August 29, 1954, near Fresno, California, sustained multiple injuries, arising out of and occurring in the course of his employment, to the chest, back, hips and pelvis.

2. Applicant was not working in the capacity of an independent contractor, but was an employee of Dan Calabrese. At said time both the employer and the employee were subject to the provisions of the California Workmen's Compensation Law, the employer's compensation insurance carrier was Pacific Employers Insurance Company, and employee's wages were maximum.

3. Said injury caused temporary total disability for the period August 30, 1954 to and including April 13, 1956.

4. The injury of August 29, 1954 resulted in permanent disability ratable at 100 per cent.

5. Applicant is in need of further medical treatment to cure or relieve of the effects of injury, and is entitled to have the same furnished by defendants.

6. Applicant is entitled to recover the cost of self-procured medical treatment reasonably required to cure or relieve of the effects of injury, subject to the lien of the Veterans Administration, United States Government, for medical treatment, hospitalization and medical services, and the lien of James C. Janjigian for money advanced for nursing services for applicant.

7. State of California, Department of Employment has paid to applicant the sum of $905 as unemployment compensation disability benefits, and is entitled to a lien therefor.

8. Applicant's attorneys are entitled to a lien in the sum of $626.14 against compensation due or to become due herein, for costs advanced for litigation of this claim.

9. Applicant's attorneys have rendered legal services herein of the reasonable value of $2,000, and are entitled to a lien in that amount against compensation due or to become due.

10. Defendant insurance carrier is estopped to raise the issue of insurance coverage of Dan Cala-

brese, defendant-employer. Reformation of the insurance policy of defendant-carrier, written to cover Dan Calabrese and Joe Calabrese, co-partners, jointly and not severally, doing business as Calabrese Trucking, is ordered to show coverage of Dan Calabrese, an individual, in effect on August 29, 1954.

11. Yeppie Thomas, Joe Calabrese, and Dan Calabrese and Joe Calabrese doing business as Calabrese Trucking are not proper parties to the subject matter herein, and are entitled to be dismissed.

Award

Award Is Made in favor of Dick R. Thomas against Pacific Employers Insurance Company of temporary disability indemnity in the sum of $2,965, less, as first lien, the sum of $2,000 to Stammer, McKnight & Barnum and James C. Janjigian as attorneys' fees, and less, as second lien, the sum of $626.14 payable to James C. Janjigian and Stammer, McKnight & Barnum for litigation costs advanced, and less, as third lien, the sum of $905 payable to State of California, Department of Employment, said sums payable forthwith.

Award Is Further Made in favor of Dick R. Thomas against Pacific Employers Insurance Company of permanent disability indemnity in the sum of $30 weekly, beginning April 21, 1956 and continuing thereafter until 400 payments shall have been made, in the total sum of $12,000, and thereafter a life pension of $18.46 weekly.

Award Is Further Made in favor of Dick R. Thomas against Pacific Employers Insurance Company of further medical treatment reasonably required to cure or relieve of the effects of injury.

Award Is Further Made in favor of Dick R. Thomas against Pacific Employers Insurance Company of the costs incurred for self-procured medical treatment reasonably required to cure or relieve of the effects of injury, less the lien of the Veterans Administration, United States Government, for medical treatment, hospitalization and medical services, and less the lien of James C. Janjigian for money advanced for nursing services for applicant, in amounts to be adjusted between the parties.

It Is Ordered that jurisdiction be, and it hereby is, reserved to find and award the cost of self-procured medical treatment, in the event the parties are unable to adjust the matter out of court.

It Is Further Ordered that defendant insurance carrier, Pacific Employers Insurance Company, reform its insurance policy written to cover Dan Calabrese and Joe Calabrese, co-partners, jointly and not severally, doing business as Calabrese Trucking, to show coverage of Dan Calabrese, an individual, in effect on August 29, 1954.

It Is Further Ordered that Yeppie Thomas, Joe Calabrese, and Dan Calabrese and Joe Calabrese, doing business as Calabrese Trucking, be, and they hereby are, dismissed as party defendants herein.

It Is Further Ordered that defendant-carrier shall, as to any delayed payments and without further Commission order or direction, pay interest to applicant as required by Labor Code Section 5800.

Industrial Accident Commission
of the State of California
F. A. Lawrence
John J. Synon
Roland J. Henning
Commissioners

Appendix D

38 USCA 706

Domiciliary care and hospital treatment

In addition to the pensions provided in this chapter the Administration of Veterans' Affairs is authorized under such limitations as he may prescribe, and within the limits of existing Veterans' Administration facilities, to furnish to men discharged from the Army, Air Force, Navy, Marine Corps, or Coast Guard for disabilities incurred in line of duty or to those in receipt of pension for service-connected disability, and to veterans of any war, including the Boxer Rebellion and the Philippine Insurrection, domiciliary care where they are suffering with permanent disabilities, tuberculosis, or neuropsychiatric ailments and medical and hospital treatment for diseases or injuries: *Provided,* That any veteran of any war who was not dishonorably discharged, suffering from disability, disease or defect, who is in need of hospitalization or domiciliary care and is unable to defray the necessary expenses therefor (including transportation to and from the Veterans' Administration facility), shall be furnished necessary hospitalization or domiciliary care (including transportation) in any Veterans' Administration facility, within the limitations existing in such facilities, irrespective of whether the disability, disease, or defect was due to service. The statement under oath of the applicant on such form as may be prescribed by the Administrator of Veterans' Affairs shall be accepted as sufficient evidence of inability to defray necessary expenses.

Appendix E

38 CFR 17.47 (d)

(d) Hospital treatment or domiciliary care. (1) Hospital treatment or domiciliary care for persons who served in the active military or naval forces, including those who had active duty as a member of the Women's Army Auxiliary Corps, regardless of length of service, during a period of war as defined in paragraph "a" (1) of this section, who were discharged or released from active duty under other than dishonorable conditions; who swear that they are unable to defray the expense of hospitalization or domiciliary care (including the expense of transportation to and from a Veterans Administration facility); and who are suffering from a disability, disease, or defect which, being susceptible to cure or decided improvement, indicate need for hospital treatment, or which, being essentially chronic in type is producing disablement of such degree and of such probable persistency as will incapacitate from earning a living for a prospective period, and thereby indicates need for domiciliary care.

Appendix F

38 CFR 17.48 (d)

(d) Persons hospitalized pursuant to Par. 17.47 (c) (1) or (d) (i) to (4), inclusive, who it is believed may be entitled to hospital care or medical or surgical treatment or to reimbursement for all or part of the cost thereof, by reason of statutory, contractual, or other relationships with third parties, including those liable for damages by reason of negligence or other legal wrong, will not be furnished hospital treatment without charge therefor to the extent of the amount for which third parties are or will become liable, and such patients will be requested to execute appropriate assignment or other instrument which will entitle the Administrator of Veterans Affairs—on behalf of the United States—to receive and to collect, directly or as assignee, from the third party or parties, to the extent of the amounts for which such third party is liable, the cost of such care and treatment as determined under the applicable rules and regulations, including medical fee schedules, of the Veterans Administration. The words "by reason of statutory or contractual relationship" as used in this paragraph include, but are not limited to (1) membership in a union, fraternal or other organization, (2) rights under a group hospitalization plan, or under any insurance contract or plan which provides for payment or reimbursement for the cost of medical or hospital care, and conditions the obligation of the insurer to pay upon payment or incurrence of liability by the person

covered, (3) "Workmen's compensation" or "employers' liability" statutes, State or Federal, (4) right to "maintenance and cure" in admiralty. Notice of the assignment will be mailed promptly to the party or parties believed to be liable. When the amount of charges is ascertained bill therefor will be mailed such party or parties. If payment is not received in due course the matter will be referred to the proper chief attorney.

Appendix G

Labor Code of the State of California, Section 4600

Medical, surgical, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatus, including artificial members, which is reasonably required to cure or relieve from the effects of the injury shall be provided by the employer. In the case of his neglect or refusal seasonably to do so, the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing treatment.

In accordance with the rules of practice and procedure of the commission, the employee, or the dependents of a deceased employee, shall be reimbursed for expenses reasonably, actually, and necessarily incurred for X-rays, laboratory fees, and medical reports required to successfully prove a contested claim.

Section 4903

The commission may determine and allow as a lien against any amount to be paid as compensation:

(b). The reasonable expense incurred by or on behalf of the injured employee, as provided by Article 2 of Chapter 2 of Part 2 of this division. (Note: Which includes Section 4600, quoted above.)

LE COPY

Office Supreme Court, U.S.
FEB 2 1959
JAMES BROWNING, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 638

PACIFIC EMPLOYERS INSURANCE COMPANY,
Petitioner,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA, DICK R. THOMAS, JOE CALABRESE and DAN CALABRESE dba CALABRESE TRUCKING, JOE CALABRESE and DAN CALABRESE as individuals, V. THOMAS, and THE VETERANS ADMINISTRATION OF THE UNITED STATES,
Respondents.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 636

PACIFIC EMPLOYERS INSURANCE COMPANY,
Petitioner.

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA, DICK R. THOMAS, JOE CALABRESE and DAN CALABRESE, dba CALABRESE TRUCKING, JOE CALABRESE and DAN CALABRESE as individuals, Y. THOMAS, and THE VETERANS ADMINISTRATION OF THE UNITED STATES.
Respondents.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Petitioner has asked this court to review an order of the California Industrial Accident Commission granting the lien claim of the Veterans Administration of the United States for medical, surgical and hospital treatment rendered to a veteran seriously injured in the course of his employment with a private employer.

Petitioner thereafter filed a Petition for Writ of Review in the District Court of Appeal which was denied without opinion on August 22, 1958.

Petitioner then filed a Petition for Hearing in the Supreme Court of the State of California, which was denied without opinion on October 15, 1958.

OPINION BELOW

The petitioner has correctly stated the history of the litigation herein.

JURISDICTION

The jurisdiction of this court is invoked by Petitioner under *28 U. S. C., Sec. 1257 (3).*

Respondent submits that there is no federal question whatsoever involved in this case.

In accordance with its regulations, the Veterans Administration of the United States filed a lien for expense incurred by it on behalf of an injured employee wrongfully denied medical care by the petitioner. This lien was granted under the applicable state statutes permitting such liens. These statutes have been interpreted in accordance with their plain meaning. This interpretation is in no way repugnant to the Constitution, treaties or laws of the United States, or with any applicable decision of this court. The interpretation placed on the applicable statutes is solely a state matter and within the exclusive province of the state courts.

QUESTION PRESENTED

May the California Industrial Accident Commission allow a lien filed by the Veterans Administration of the United States for medical and hospital expense

incurred by it on behalf of an injured employee-veteran?

STATUTES AND REGULATIONS INVOLVED

California Labor Code, Section 4600 provides in part as follows:

> "Medical, surgical, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatus, including artificial members, which is reasonably required to cure or relieve from the effects of the injury shall be provided by the employer. In the case of his neglect or refusal seasonably to do so, the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing treatment."

California Labor Code, Section 4903 provides in part as follows:

> "The commission may determine, and allow as a lien against any amount to be paid as compensation:
>
> * * * * *
>
> "(b) The reasonable expense incurred by or on behalf of the injured employee, as provided by Article 2 of Chapter 2 of Part 2 of this division." (Note: This includes Section 4600, quoted above.)

Other pertinent statutes and regulations have been quoted by the petitioner in the appendices to its petition.

STATEMENT

The applicant-veteran, Dick R. Thomas, sustained a serious injury arising out of and in the course of his employment. Petitioner, the workmen's compensa-

tion insurer for his employer, erroneously denied liability and refused to provide medical and hospital treatment as well as other compensation benefits. The applicant, therefore, was forced to seek aid from the Veterans Administration and received necessary medical treatment and hospital care at Veterans Administration hospitals at Fresno and Long Beach, California.

Prior to the first hearing in this matter, the Veterans Administration Hospital filed its lien claim to which the applicant-veteran had assented. (This was received and filed into evidence as a part of Applicant's Number 2 at the hearing held August 4, 1955. A certified copy of the lien claim complete with the "Employee's Consent to Allowance of Lien" is a part of the Praecipe prepared by Petitioner.) The lien claim was brought up to date periodically thereafter.

After the referee issued his Findings and Award (in which he found the injury to be compensable and in which the lien claim of the Veterans Administration was allowed) several parties petitioned for reconsideration by the commission. Thereafter, the commission issued its Decision After Reconsideration (Appendix C of petition, page v). The lien claim of the Veterans Administration was allowed in such decision.

Petitioner thereafter filed a Petition for Writ of Review in the District Court of Appeal, arguing that it was not liable for the payment of compensation

benefits to the applicant for various reasons, as well as that it was not liable for the lien claim of the Veterans Administration. Such petition was denied without opinion on August 22, 1958.

Petitioner then filed a Petition for Hearing in the Supreme Court of the State of California, again arguing that it was not liable to the applicant for various reasons as well as that it was not liable for the lien claim. Such petition was denied without opinion on October 15, 1958.

Petitioner has now accepted the fact that it is liable to the applicant for all benefits except the cost of the medical treatment and hospital care furnished to the applicant by the Veterans Administration, and the only question involved in this Petition for Writ of Certiorari concerns the lien claim of the Veterans Administration.

ARGUMENT

California Labor Code, Section 4600 provides essentially that the employer (which includes the insurer) is liable for the reasonable expense incurred by or *on behalf of* the employee in providing medical and hospital treatment where the employer refuses to do so.

California Labor Code, Section 4903 permits a lien for the reasonable expense for medical and hospital treatment incurred by or *on behalf of* the injured employee.

The wording of these code sections makes it clear that it is not necessary that the injured employee incur any expense; it is sufficient if expense is incurred

on his behalf. The lien claimant's right to reimbursement is direct, not derivative. There is no question in the instant case but that the Veterans Administration incurred expense on behalf of the injured employee, to be exact, the amount of its lien.

In the case of *United States* v. *Saint Paul Mercury Indemnity Co.*, 238 Fed. 2d 594, cited and relied upon by the Petitioner, the veteran, having contracted poliomyelitis, was admitted to a Veterans Administration Hospital. He carried "poliomyelitis expense policy" insurance under which the insurer agreed to pay him "for expenses *actually incurred by the insured*" not exceeding the aggregate sum of $5,000, if he were stricken with poliomyelitis. (Emphasis added.)

The Veterans Administration billed the insurer from time to time. The insurer refused to pay on the ground that there was no "expense actually incurred by the insured" since the insured had qualified for free care under the appropriate Federal statutes. The Eighth U. S. Circuit Court of Appeals upheld the insurer's contention on the ground that since the veteran was entitled to free care no expense had been incurred "by him."

The basis of the *St. Paul* case is that the insurance policy covered only expense "actually incurred" and since the veteran had not "actually incurred" any expense the Veterans Administration could not require the insurer to pay the cost of hospitalization.

In the instant case, the question of whether the employee-veteran himself actually incurred any ex-

pense is not relevant. Expense was incurred by the lien claimant *on his behalf*, which is all that is necessary to qualify under the California statutes.

The *St. Paul* case is therefore not in point.

Petitioner also cites and relies on *U. S.* v. *Standard Oil Company*, 332 U. S. 301, 91 L. Ed. 2067, 67 S. Ct. 1604. In that case a soldier was injured by a third party tort feasor. The United States filed suit to recover from the third party the amount it had expended for hospitalization and for soldier's pay while the soldier was unfit for duty. The court pointed out, at page 305, that "Perhaps no relation between the government and a citizen is more distinctly federal in character than that between it and members of its armed forces. * * * the scope, nature, legal incidents and consequences of the relation between persons in service and the government are fundamentally derived from federal sources and governed by federal authority." It held that whether the United States should be reimbursed was a matter of federal fiscal policy determinable by Congress, which alone may create a right of action to recover damages from the wrongdoer.

The applicant herein is not a soldier but a veteran. His only rights are those of a veteran long out of service. The rationale of the *Standard Oil Company* case therefore does not apply to him.

The distinction in the relationship between soldier and veteran is pointed up in the cases of *Feres* v. *United States*, 340 U.S. 135, 71 S. Ct. 153 and *United States* v. *Brown*, 348 U.S. 110, 75 S. Ct. 141. There

were three cases considered in one opinion in the *Feres* decision. In one of the cases, the *Jefferson* case, a soldier suffered injury through the malpractice of an army surgeon. The Court held that the United States was not liable under the Tort Claims Act for this injury because of the nature of the relationship between persons in service and the government. In the *Brown* case, a veteran, who was receiving medical treatment in a Veterans Administration Hospital for an injury sustained while on active duty in the armed services, was injured through the malpractice of the hospital personnel. The Court pointed out that the injury occurred after his discharge while he enjoyed a civilian status. It held that the United States was liable under the Tort Claims Act for this malpractice since the injury was not incident to nor did it arise out of or in the course of military service.

In addition, the regulations of the Veterans Administration provide, in effect, that veterans hospitalized for non-service connected disabilities "will not be furnished hospital treatment without charge therefor to the extent of the amount for which third parties are or will become liable." The regulations specifically provide for reimbursement for cost of hospital care or medical or surgical treatment by reason of statutory or contractual relationship, including workmen's compensation. (38 CFR 17.48 (d), Appendix F of Petitioner's Brief, p. xiii.)

As the Court in *United States* v. *St. Paul Mercury Indemnity Co.*, 133 Fed. Sup. 726 (the opinion of the

district court in the *St. Paul* case), pointed out, the regulations promulgated by the Administrator of Veterans Affairs within the authority of 38 U. S. C. 706 (Appendix D of Petitioner's Brief, p. xi) have the effect of law. The *St. Paul* case, supra, affirmed this reasoning on appeal, at page 598. (See also 38 U. S. C. 11a, now 38 U. S. C. 2210.)

In the *Standard Oil* case, supra, the Court held that Congress alone might create a right of action in the Federal Government to recover damages from the wrongdoer. Here, Congress has created such a right in that it delegated the power to make appropriate rules and regulations to the Veterans Administrator. The regulations of the Veterans Administrator authorize recovery in cases such as the instant one.

It is submitted that the *Standard Oil Co.* case, supra, is authority for the position taken by the commission rather than that taken by the petitioner.

In *United States* v. *Gilman*, 347 U. S. 507, 74 S. Ct. 695, 98 L. Ed. 898, cited by petitioner, the single question was whether the United States might recover indemnity from one of its employees after it had been held liable under the Federal Tort Claims Act for the negligence of the employee. The court held that the United States might not recover such indemnity in the absence of congressional action authorizing such recovery.

Once again this case is not in point since Congress has authorized recovery in a situation such as is presented in the instant case.

Petitioner cites *United States* v. *Harleysville Mut. Cas. Co.*, 150 Fed. Sup. 326. In this case, a veteran who had reenlisted was injured in an automobile accident. He was treated in a Veterans Administration Hospital. The Veterans Administration attempted to recover the expense of his hospitalization from the Army, without success. The patient settled his case with the insurer of the third party tort feasor without payment to the Veterans Administration, in spite of a lien which had been filed by the latter.

The court said at page 333:

> "In the instant case the veteran refused to execute an assignment. Thus any claim of right to proceed against the insurer based on the regulation of the Veterans Administration must fail."

Whether or not the District Court's conclusion was correct, because the veteran refused to execute an assignment the judge treated the case as if there were no applicable federal regulation and relied upon the reasoning in the *Standard Oil Company* and *Gilman* cases, supra.

In our case, the employee-veteran executed an assignment.

The *Harleysville Mut. Cas. Co.* case is not in point.

The Petitioner stated in its statement on jurisdiction that "There is conflict within this State, as well as interstate conflict, in regard to whether or not the Federal Laws permit a Veterans Administration Hospital to make claim against a veteran or a Workmen's Compensation carrier for hospital and medical treatment."

As far as we know, the Industrial Accident Commission of the State of California has never made a contrary decision on this question. The case referred to by petitioner was decided by an individual referee and none of the parties petitioned for reconsideration by the commission. Therefore the question was not presented to the commission.

Respondent commission has found only one case of record concerning the right of the Veterans Administration to file a claim against a workmen's compensation insurer for hospital and medical treatment given a veteran. The decision in that case is in complete accord with the decision made herein.

In the case of *Higley* v. *Schlessman*, (Oklahoma, 1956), 292 P. 2d 411, the Supreme Court of the State of Oklahoma referred to the Veterans Administration regulations authorized by Federal statute, which gave the Administrator of Veterans Affairs the authority to furnish hospital and medical care and to make a reasonable charge therefor in workmen's compensation cases such as the present case. The court held that the Administrator had a right to have his claim for such services in a reasonable amount allowed by the State Industrial Commission to the same extent as any other private hospital or physician. This case was decided subsequent to the *St. Paul* case and the U. S. Supreme Court decisions relied upon by Petitioner.

Petitioner is attempting to take advantage of its own wrong. It is bound under the law to provide medi-

cal and hospital treatment to an injured employee. After refusing to obey the law, it now maintains that since the injured employee was a veteran and thus could be admitted to a Veterans Administration Hospital, that it should not be required to reimburse the Hospital. It apparently feels that the taxpayers should pay the cost of treatment, although it is in the business of accepting premiums from employers to pay for the costs of injuries to their employees.

If the lien of the Veterans Hospital were not allowed, it would follow that some insurance companies would routinely refuse medical and hospital treatment to any injured workman who happened to be a veteran.

If the lien were not allowed in this case, then it would follow that the reimbursement provisions of the Veterans Regulations are, for all practical purposes, of no force and effect.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Petition for Writ of Certiorari should be denied.

Dated, San Francisco, California.
January 30, 1959

Respectfully submitted,

EVERETT A. CORTEN
Attorney for Respondent
Industrial Accident Commission
of the State of California

EMILY B. JOHNSON,
of Counsel

FILE COPY

Office-Supreme Court, U.S.
FILED
FEB 4 1950
CHARLES ELMORE CROPLEY, Clerk

No. 627

In the Supreme Court of the United States

OCTOBER TERM, 1950

PACIFIC EMPLOYERS INSURANCE COMPANY, PETITIONER

v.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA, EVERT E. THOMAS, SUE CALAHAN AND DAN CALAHAN, A/K/A CALAHAN, DECEASED, JOE CALAHAN, AND [illegible] AS ADMINISTRATRIX, V. THOMAS, AND THE VETERANS ADMINISTRATION OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

BRIEF FOR THE VETERANS ADMINISTRATION IN OPPOSITION

[illegible]

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In the Supreme Court of the United States

OCTOBER TERM, 1958

No. 636

PACIFIC EMPLOYERS INSURANCE COMPANY, PETITIONER

v.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA, DICK R. THOMAS, JOE CALABRESE AND DAN CALABRESE, D/B/A CALABRESE TRUCKING, JOE CALABRESE AND DAN CALABRESE AS INDIVIDUALS, Y. THOMAS, AND THE VETERANS ADMINISTRATION OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

BRIEF FOR THE VETERANS ADMINISTRATION IN OPPOSITION

OPINIONS BELOW

The final order and decision[1] of the California Industrial Accident Commission (App.,[2] pp. v–x) is apparently not reported. The order of the California District Court of Appeal, Fourth Appellate District (App. B), denying the petitioner's petition for writ

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[1] The original order and decision entered on December 31, 1957, insofar as the award to the Veterans Administration is concerned, is identical with that on petition for reconsideration, included in the petitioner's appendix at pages v–x.

[2] "App." references are to the appendices to the petition.

of review from the Commission's award, was entered without opinion. The order of the California Supreme Court[3] (App. A) denying the petitioner's application for hearing was also entered without opinion.

JURISDICTION

The order of the Supreme Court of California denying the petitioner's application for a hearing was entered on October 15, 1958 (Pet. 5). The petition for a writ of certiorari was filed on January 9, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1257.

QUESTION PRESENTED

Whether the Veterans Administration is entitled to be reimbursed under a state workmen's compensation statute for its hospitalization and medical costs in treating an injured workman.

STATUTES AND REGULATIONS INVOLVED

The applicable legislation and regulations are set forth in Appendices D through G to the petition (App., pp. xi–xv).

STATEMENT

This action was originally brought before the California Industrial Accident Commission by Dick R. Thomas for appropriate workmen's compensation benefits for injuries sustained while in the employ of respondent Calabrese. The petitioner was the employer's compensation insurance carrier at the time in question.

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[3] This order was entered on October 15, 1958 (Pet. 5), not August 22, 1958, as indicated in petitioner's Appendix A.

During these proceedings a lien was filed by the Veterans Administration for medical and hospitalization costs incurred by the VA in treating Thomas for his work injuries. After the proceedings were concluded, an award was made by the California Industrial Accident Commission establishing, *inter alia*, that Thomas was entitled to recover from the petitioner for self-procured medical and hospitalization services subject to the lien of the Veterans Administration which had provided the services and borne the actual costs thereof (App., p. ix).[4]

The undisputed facts concerning the claim of the United States may be briefly stated:

After Thomas' injury—which was held by the Commission to have been incurred in employment covered by the insurance policy issued by petitioner—he was admitted to the Veterans Hospital in Fresno, California, and later transferred to the Veterans Hospital in Long Beach, California. The petitioner does not contend here, nor did it in any of the proceedings below, that the lien submitted by the Veterans Administration for costs in treating Thomas represents an unreasonable charge for the services rendered. Neither does the petitioner challenge the fact that those services were reasonably required to cure Thomas and that Thomas' employer had failed to provide him with the necessary medical attention as required by the California statute (App., p. xv).

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[4] The Commission's award also recognized the lien filed by Thomas' attorney for nursing services paid for by the attorney (App., p. ix). The petitioner does not contest this aspect of the award.

While in the Veterans Hospital, Thomas was required to execute a "Power of Attorney and Agreement" pursuant to the provisions of VA regulation, 38 C.F.R. 17.48(d) (App., pp. xiii–xiv). This regulation provided, in essence, that a veteran, such as Thomas, with a non-service-connected disability would not be furnished hospitalization and medical care without cost to the extent that the veteran was entitled to reimbursement from a third party, and that such veterans should assign any such rights to the Administrator of Veterans' Affairs to cover the reasonable cost of the VA care. Rights specifically covered in 38 C.F.R. 17.48(d) and assigned in the "Power of Attorney" executed pursuant thereto included those arising under workmen's compensation statutes.

The petitioner's objection to the VA award in the proceedings before the Commission was rejected by the Commission on the basis of applicable California legislation making the employer liable for medical costs "incurred by or on behalf of the employee" and authorizing the Commission to allow a lien for reasonable expense "incurred by or on behalf of the injured employee" (Pet. 10–11; App. G). The petitioner's petition for writ of review to the District Court of Appeal, Fourth Appellate District, with regard to the Veterans Administration lien, was denied by that court without opinion (App. B). The subsequent application for hearing in the Supreme Court of California, predicated on the same contentions advanced here, was similarly denied without opinion (App. A).

ARGUMENT

The decision of the California Industrial Accident Commission recognizing the VA lien in this case, sustained by the orders of the California District Court of Appeal and Supreme Court denying review without opinion, is correct in view of the state workmen's compensation legislation providing for reimbursement to those who bear the costs of necessary medical and hospital treatment of an injured employee. The Veterans Administration is entitled, as is any private institution or person who assumes the employer's statutory obligation of caring for the employee, to the remedies afforded by the state workmen's compensation legislation. The decision in California is in accord with the only two other state appellate rulings which have passed on this issue. Moreover, the petitioner's heavy reliance on the decisions of this Court in *United States* v. *Standard Oil Co.*, 332 U.S. 301, and *United States* v. *Gilman*, 347 U.S. 507, is completely misplaced since those decisions in no way impair the full availability to the Government of established remedies provided by statute or the common law. Thus, there is no occasion for further review in this Court.

1. The obligation imposed by the California workmen's compensation legislation with regard to providing necessary medical and hospital care for an injured employee is plain. The employer is to provide such care, and in the event of his failure to do so, "the employer is liable for the reasonable expense incurred by or *on behalf of* the employee in providing treatment"

(emphasis added) (California Labor Code, § 4600, App. G). And in Section 4903 of the Code, the Industrial Accident Commission is authorized to allow a lien against compensation benefits to the extent of "reasonable expense incurred * * * on behalf of the injured employee * * *" (App. G). After Thomas' employer failed to perform its statutory obligation, the United States rendered the requisite services, and in this event, the legislation provided that the employer would be liable for the cost of these services. This liability runs not only to the employee who might incur expense for the necessary treatment, but also directly to those who bear the cost of treatment on the employee's behalf.

In view of these unambiguous provisions, and absent any challenge by the petitioner to the reasonableness of the hospital bill or the necessity for the VA services, the right of the United States to claim reimbursement for its treatment of Thomas is clearly provided. It has long been firmly established that governmental entities are entitled to the same benefits and protections provided by local law as any other persons or organizations. *E.g., Dugan* v. *United States*, 3 Wheat. 172, 181; *Cotton* v. *United States*, 11 How. 229, 231; see also, Sutherland, *Statutory Construction*, Vol. 3, § 6302 (3d ed., 1943). If the VA were denied reimbursement in this situation, the petitioner would avoid a risk, and its insured employer, an obligation, clearly imposed by statute. Such a result would obviously constitute unjust enrichment.

The foregoing considerations have led two other state appellate courts to adopt the conclusions and the

determination of the California Industrial Accident Commission and the California courts in the present litigation. Thus, in *Higley* v. *Schlessman*, 292 P. 2d 411, the Supreme Court of Oklahoma, in circumstances similar to those here, held that the Veterans Administration was entitled to hospital and medical costs in the compensation proceeding "to the same extent as any other private hospital or physician". 292 P. 2d at 417. And in *Stafford* v. *Pabco Products and United States, Intervenor* (Superior Court of New Jersey, Appellate Division, Docket No. A–582–57, dated December 29, 1959; not yet reported), the court upheld an award in a workmen's compensation proceeding for VA hospital and medical costs, observing that there was no valid basis "for charging to the employer the cost of treatment given by state, county, municipal or private hospitals and at the same time holding it not responsible to a federal veteran's hospital." Cf. *Trustees of the State Hospital* v. *Lehigh Valley Coal Co.*, 267 Pa. 474; *Reichle* v. *Hazle*, 22 Cal. App. 2d 543.

2. The petitioner relies heavily on an asserted conflict between the decision of the California Industrial Accident Commission in this case and the decisions of this Court in *United States* v. *Standard Oil Co.*, 332 U.S. 301 and *United States* v. *Gilman*, 347 U.S. 507. In both *Standard Oil* and *Gilman*, this Court refused "to create a new substantive legal liability" where the Government, in *Standard Oil*, was suing in tort for losses occasioned by the injury to a soldier, and, in *Gilman*, was seeking indemnity from one of its civilian employees for whose negligence it was

held liable. In both cases, this Court ruled that in the absence of any existing common law or statutory remedy, and in view of the unique and special relationship under federal law of soldier or employee and the Government, it was for Congress to create the remedy sought by the Government. These decisions, however, in no way purported to affect the traditional right of the United States, as in the instant case, to avail itself of established, general remedies provided by state statute. Nor is there anything in the relationship between veteran and the federal Government, insofar as hospital care is concerned, that would justify reimbursement only on the basis of a federal statute.

The petitioner's reliance on the decision of the Court of Appeals for the Eighth Circuit in *United States* v. *St. Paul Mercury Indemnity Co.*, 238 F. 2d 594, is equally unfounded. The crucial distinction is that *St. Paul*, based primarily on the effect of the assignment to the VA, did not involve liability for hospitalization and medical care of an employer under workmen's compensation legislation, but rather liability of an insurer under a poliomyelitis policy insuring for "expenses actually incurred". The insured, a veteran, entered a veterans hospital for treatment of poliomyelitis and assigned all entitlement to benefits to the VA. In the Government's action against the insurer, the court ruled that the parties were bound by the language of the insurance policy and that since the insured had not, under 38 U.S.C. 706, sustained "actual expenses", the assignment to the VA gave VA nothing and therefore was ineffec-

tive to establish recovery under the policy. Here, as noted above, we are not concerned with the effect of an assignment under an insurance policy clause, but only with the nature of an employer's liability to one who provides needed treatment for the injured employee under workmen's compensation legislation.

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

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